

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING
A JUDGE NO. 02-487

Supreme Court Case
No.: SC03-1171

**RESPONDENT'S MOTION IN LIMINE
TO EXCLUDE ALL DOCUMENTS PROVIDED
TO THE JUDICIAL QUALIFICATIONS COMMISSION BY
JEFFREY JOHN DEL FUOCO**

The Honorable Gregory P. Holder ("Judge Holder" or "Respondent"), by counsel, files with the Hearing Panel of the Florida Judicial Qualifications Commission ("the Panel") this Motion in Limine to Exclude all Documents Provided to the Florida Judicial Qualification Commission ("JQC") by Jeffrey John Del Fuoco.

1. Jeffrey John Del Fuoco ("Del Fuoco") alleges that in early 2002 an unmarked envelope was anonymously placed under his office door at the United States Army Reserve Headquarters in St. Petersburg. *See* Affidavit of Jeffrey J. Del Fuoco.

2. Del Fuoco claims that the envelope contained: a typewritten note; an alleged copy of the Air War College ("AWC") paper that Judge Holder had submitted to the AWC four years (now almost seven years) earlier (i.e., the purported Holder paper or PHP), and a copy of the paper authored by David Hoard (the "Hoard paper"). *See* Affidavit of Jeffrey J. Del Fuoco. Additionally, Del Fuoco claims that, while cleaning a public storage unit rented by him, he located

additional documents (Collectively, the “Documents”) relevant to this matter. *See* Memorandum of Jeffrey J. Del Fuoco to Col. Tom Jaster.

3. The JQC intends to introduce the Documents into evidence at the Final Hearing. *See* Florida Judicial Qualification Commission’s Prehearing Statement, filed August 25, 2004.

4. Judge Holder has moved to exclude all testimony of Del Fuoco at the Final Hearing.¹ *See* Judge Holder’s Motion in Limine to Exclude all Testimony of Jeffrey John Del Fuoco.

5. Section 90.901 of the Florida Evidence Code provides that “[a]uthentication or identification of evidence is required as a condition precedent to its admissibility.” § 90.901, Fla. Stat (2004).

6. The authentication requirement exists, among other things, to prevent fraud. 5 Mueller & Kirkpatrick, *Federal Evidence* § 513 (2d ed.). A court resolving a dispute should not assume that a matter offered in evidence is what it appears to be on its face, or what the offering party claims it to be, but rather, must require formal proof of the identity or nature of the matter in question. *Id.*

¹ Del Fuoco is noticed for Deposition before the expiration of the discovery cutoff. At this time, Judge Holder is unsure if Del Fuoco’s scope of testimony will be expanded. Therefore, Judge Holder is filing this motion to preserve his objection. If appropriate, a supplemental memorandum will be filed to update the Panel following Del Fuoco’s deposition.

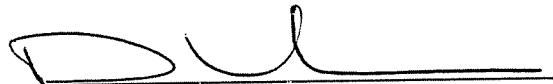
7. Without Del Fuoco's testimony, the Documents cannot be authenticated.

8. Finally, under Section 90.403, Florida Statutes, the prejudicial nature of the evidence outweighs any probative value.

WHEREFORE, Judge Holder requests that this Panel enter an order precluding the entry of the Documents into evidence at the Final Hearing.

Dated: August 25, 2004

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that on August 25, 2004, a copy of the foregoing has been served by U.S. Mail to Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and by telecopier and U.S. Mail to: Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.



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